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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/855,369	05/15/2001	Douglas M. VanDeRiet	3591-1092	8754

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RICHARD E. STANLEY, JR  
BRINKS HOFER GILSON & LIONE  
P.O. BOX 10395  
CHICAGO, IL 60610

EXAMINER

HARRIS, STEPHANIE N

ART UNIT	PAPER NUMBER
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3636

DATE MAILED: 01/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/855,369

Applicant(s)

VANDERIET ET AL.

Examiner

Stephanie N. Harris

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 October 2002.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,6-14 and 16-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,6-14 and 16-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 8, 9, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yang (USPN 5503455) in view of Koa (USPN 5067773).

Yang discloses a chair comprising a frame (10) having a series of grasping members (11) located around a circumference of the frame and fabric (20) as seen in Figure 2. The series of grasping members (11) secure the fabric (20) to the frame (10) as seen in Figure 1. The fabric (20) provides a body support surface exposed to a user. The grasping members (11) comprise teeth extending upward from the frame (10) as seen in Figure 3. The grasping members (11) comprise an undercut area along an outside of the grasping members as seen in Figure 3. The fabric comprises holes (21) that the grasping members protrude through thereby securing the fabric to the frame as seen in Figure 3. A cover (30) is installed onto the frame and over grasping members as seen in Figure 2. The cover is flexible and can be installed onto the frame by flexing the cover onto the frame.

Regarding claim 14, Figure 3 shows the frame further comprises a raised ridge disposed along an inner circumference of the grasping members and a recessed

channel disposed between the raised ridge and the grasping members that extends to a base of the grasping members.

Yang has been described above noting Figures 1-3. Yang shows all of the teachings of the claimed invention but fails to show the use of grasping members with a rounded top and a base. Koa discloses grasping members (52) that have a rounded top and base as seen in Figure 4. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the grasping members of Yang with the rounded top grasping members, as shown by Koa, in order to provide a more secure fit.

Claims 6, 7, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yang.

Yang discloses the claimed invention except for the use of a knit fabric with interlocked and lateral elastomer threads and longitudinal polyester. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use knit fabric with interlocked and lateral elastomer threads and longitudinal polyester, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yang in view of Fujita et al.

Yang and Fujita et al. have been described above. Yang shows all of the teachings of the claimed invention but fails to show the use of a retention slot. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the frame of Yang with the retention slot, as shown by Fujita et al., in order to provide a more secure fit for the fabric onto the frame.

Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yang in view of Levine (USPN 2864438).

Yang shows all of the teachings of the claimed invention but fails to show the use of a retention slot and retention pad.

Levine discloses a chair comprising a frame (36, 37) having a series of grasping members (39) located around a circumference of frame (36,37) and fabric (41). The grasping members secure the fabric to the frame. The fabric provides a body support surface exposed to a user. The frame (36,37) comprises a retention slot comprising a first hole that is larger than a head of a pin and a second hole that is smaller than the head as seen in Figures 5 and 7. The retention slot further comprises a retention pad (40) between the first and second hole that retains a shaft of the pin (42) within the second hole.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the frame of Yang with the retention slot and retention pad, as shown by Levine, in order to provide a more secure fit for the fabric onto the frame.

Claims 10, 12, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yang in view of Fujita et al. (USPN 6315364).

Yang shows all of the teachings of the claimed invention but fails to show the use of a retention slot and a retention tab.

Fujita et al. discloses a chair comprising a frame (12) with a series of grasping members (30) located around a circumference of the frame and fabric (10) as seen in Figures 8 and 9. The series of grasping members (30) secure the fabric (10) to the frame (12). The fabric (10) provides a body support surface exposed to a user. The frame (12) comprises a retention slot comprising a first hole located at the top element (8) that is larger than a head of a pin (32) and a second hole that is located at the bottom of element (8) adjacent element (34) that is smaller than the head of a pin (32) as seen in Figure 9. The retention slot further comprises a retention tab (36) that prevents longitudinal movement of the pin (32) when the pin is installed in.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the frame of Yang with the a retention slot and a retention tab, as shown by Fujita et al. , in order to in order to in order to provide a more secure fit for the fabric onto the frame.

Regarding claim 13, Fujita et al. has been described above noting Figure 7-9. Fujita et al. further comprising a chair frame (8) with a hole receiving a shaft of the pin (32) and a nut (34) pressed onto an end of the pin shaft thereby attaching the frame to the chair frame as seen in Figure 9. Fujita et al. shows all of the teachings of the claimed invention but fails to positively recite the use of a tinnerman nut. It would have

been an obvious matter of design choice to use a tinnerman nut, since applicant has not disclosed that the use of a tinnerman nut solves any stated problem or is for any particular purpose and it appears that the invention would perform equally as well with another type of nut.

### ***Response to Arguments***

Applicant's arguments filed on October 30, 2002 have been fully considered but they are not persuasive.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Koa discloses a grasping member with a rounded top and base.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a

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reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to Applicant's argument that it is unclear how Koa can be combined with Yang, Koa discloses the shape of a rounded top grasping member. This rounded shape could be used for the grasping members of Yang in order to provide a more secure fit for the fabric onto the frame.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephanie N. Harris whose telephone number is 703-305-1838. The examiner can normally be reached on Monday from Friday to 9am-5pm.




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The fax phone number for the organization where this application or proceeding is assigned is 703-305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

SNH

January 4, 2003

  
Peter M. Cuomo  
Supervisory Patent Examiner  
Technology Center 3600